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ELMBURG, ERIC ELMBURG, ROCKY
FLICK, CRESTWOOD HOLDINGS, INC. and
BERGAN, LLC

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MICHAEL MONTGOMERY,
Plaintiff,

v.

WAL-MART STORES, INC.;
KINDERHOOK INDUSTRIES II, L.P.;
KINDERHOOK INDUSTRIES, L.L.C.;
KINDERHOOK CAPITAL FUND II, L.P.;
CRESTWOOD HOLDINGS, INC.;
BERGAN, L.L.C.; JOHN ELMBURG;
ROBERT ELMBURG; ERIC ELMBURG;
ROCKY FLICK; HOME DEPOT U.S.A.,
INC.; DOES 1 through 20 inclusive,

Defendants.

Case No.: 12CV3057 JLS (DHB)

**DECLARATION OF ERIC
ELMBURG IN SUPPORT
MOTION TO DISMISS FOR
LACK OF STANDING (12(B)(1)),
LACK OF PERSONAL
JURISDICTION (12(B)(2)), AND
FAILURE TO STATE A CLAIM
(12(B)(6))**

Date: April 11, 2013
Time: 1:30 p.m.
Ctvm: 3B
Judge: Hon. Janis L. Sammartino

1 I, Eric Elmburg, declare as follows:

2 1. The statements made in this declaration are based upon my personal
3 knowledge, except where stated upon information and belief, and if called to testify
4 with regard to the same, I could do so competently.

5 2. At all relevant time to this matter, I have been a resident of Oklahoma.

6 3. At all relevant time to this matter, I have not owned real or personal
7 property located in California.

8 4. At all relevant time to this matter, I have not engaged in business in
9 California.

10 5. I have never manufactured or sold gasoline containers.

11 6. I have never manufactured products.

12 7. I have never injected any product into the stream of commerce with an
13 expectation that such product will be sold in California.

14 8. Over my lifetime, I have been to California on a limited number of
15 business and personal trips.

16 9. Blitz U.S.A., Inc., ("Blitz") is an Oklahoma corporation. At all relevant
17 time to this matter, Blitz's manufacturing facility was located in Miami, Oklahoma.
18 On June 20, 2002, the date of the Montgomery occurrence, Blitz manufactured
19 products in the automotive and pet industry.

20 10. From 1977 through October 3, 2005, I owned a minority interest in Blitz.

21 11. On October 3, 2005, all Blitz shareholders transferred their shares in
22 Blitz to Crestwood Holdings, Inc., an Oklahoma corporation ("Crestwood Holdings"),
23 in exchange for a like number of shares in Crestwood Holdings. After such transfer,
24 Crestwood Holdings was the parent of Blitz, and I owned a minority interest in
25 Crestwood Holdings.

26 12. Effective October 1, 2006, Blitz spun off its pet division to Bergan, LLC,
27 an Oklahoma limited liability company ("Bergan"). After the spinoff, Blitz and
28

1 Bergan were sister entities, each owned by the parent Crestwood.

2 13. In an arm's length transaction on September 21, 2007, Crestwood sold
3 100% of the Blitz stock to Blitz Acquisitions, LLC, a Delaware limited liability
4 company ("Blitz Acquisitions"). Crestwood, Bergan, and I are unaffiliated with Blitz
5 Acquisitions.

6 14. Following Crestwood Holding's September 21, 2007, sale of Blitz stock
7 to Blitz Acquisitions, I remained a minority stockholder of Crestwood Holdings.

8 15. From and after September 21, 2007, I had neither a direct nor indirect
9 ownership interest in Blitz.

10 16. On November 6, 2011, Blitz and Blitz Acquisitions filed for bankruptcy
11 protection under Chapter 11 in the matter styled: *In re: Blitz U.S.A., Inc. et al.*,
12 United States Bankruptcy Court for the District of Delaware, Case No. 11-13603-
13 PJW. Such bankruptcy action is currently pending.

14 I declare under penalty of perjury that the foregoing is true and correct, except
15 for those matters stated on information and belief and as to those, I believe them to be
16 true.

17 Executed on this 5th day of March, 2013 at Monkey Island, Oklahoma.

18
19 
20 Eric Elmburg